



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

Re: DIFFERIN Topical Gel
(5,015,758)
Docket No. 96E-0359

JAN 21 1997

The Honorable Bruce Lehman
Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks
Box Pat. Ext.
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Commissioner Lehman:

This is in regard to the application for patent term extension for U.S. Patent No. 5,015,758, filed by Centre International de Recherches Dermatologiques ("CIRD"), under 35 U.S.C. § 156 *et seq.* We have reviewed the dates contained in the application and have determined the regulatory review period for DIFFERIN Topical Gel, the human drug product claimed by the patent.

The total length of the regulatory review period for DIFFERIN Topical Gel is 2,447 days. Of this time, 1,401 days occurred during the testing phase and 1,046 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under subsection 505(i) of the Federal Food, Drug, and Cosmetic Act involving this drug product became effective: September 20, 1989.

FDA has verified the applicant's claim that the date the Investigational New Drug application became effective was on September 20, 1989.

2. The date the application was initially submitted with respect to the human drug product under subsection 505(b) of the Federal Food, Drug, and Cosmetic Act: July 21, 1993.

The applicant claims July 15, 1993, as the date the New Drug Application (NDA) for DIFFERIN Topical Gel (NDA 20-380) was initially submitted. However, FDA records indicate that NDA 20-380 was submitted on July 21, 1993.

3. The date the application was approved: May 31, 1996.

FDA has verified the applicant's claim that NDA 20-380 was approved on May 31, 1996.

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This determination of the regulatory review period by FDA does not take into account the effective date of the patent, nor does it exclude one-half of the testing phase as required by 35 U.S.C. § 156(c)(2).

Please let me know if we can be of further assistance.

Sincerely yours,



Stuart L. Nightingale, M.D.
Associate Commissioner
for Health Affairs

cc: Norman H. Stepno
Burns, Doane, Swecker & Mathis, L.L.P.
P.O. Box 1404
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[Federal Register: January 28, 1997 (Volume 62, Number 18)]

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[DOCID:fr28ja97-74]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
[Docket No. 96E-0359]Determination of Regulatory Review Period for Purposes of Patent Extension; DIFFERIN **Topical Gel**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DIFFERIN **Topical Gel** and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DIFFERIN **Topical Gel** (adapalene). DIFFERIN **Topical Gel** is indicated for the

topical treatment of acne vulgaris. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DIFFERIN **Topical Gel** (U.S. Patent No. 5,015,758) from Centre International de Recherches Dermatologiques (''CIRD''), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 24, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DIFFERIN **Topical Gel** represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DIFFERIN **Topical Gel** is 2,447 days. Of this time, 1,401 days occurred during the testing phase of the regulatory review period, while 1,046 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: September 20, 1989. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on September 20, 1989.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: July 21, 1993. The applicant claims July 15, 1993, as the date the new drug application (NDA) for DIFFERIN **Topical Gel** (NDA 20-380) was initially submitted. However, FDA records indicate that NDA 20-380 was submitted on July 21, 1993.

3. The date the application was approved: May 31, 1996. FDA has verified the applicant's claim that NDA 20-380 was approved on May 31, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 257 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 31, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1997.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 97-2065 Filed 1-27-97; 8:45 am]
BILLING CODE 4160-01-F

[Federal Register: January 28, 1997 (Volume 62, Number 18)]

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From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr28ja97-77]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. 96E-0361]

Determination of Regulatory Review Period for Purposes of Patent Extension; **DIFFERIN Solution**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for **DIFFERIN Solution** and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product **DIFFERIN Solution** (adapalene). **DIFFERIN Solution** is indicated for the topical treatment of acne vulgaris. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for **DIFFERIN Solution** (U.S. Patent No. 5,015,758) from Centre International

de Recherches Dermatologiques (CIRD), and the Patent and Trademark Office requested FDA's

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assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 24, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of **DIFFERIN Solution** represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA had determinated that the applicable regulatory review period for **DIFFERIN Solution** is 2,814 days. Of this time, 1,651 days occurred during the testing phase of the regulatory review period, while 1,163 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: September 18, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on September 18, 1988.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: March 26, 1993. The applicant claims March 19, 1993, as the date the new drug application (NDA) for **DIFFERIN Solution** (NDA 20-338) was initially submitted. However, FDA records indicate that NDA 20-338 was submitted on March 26, 1993.

3. The date the application was approved: May 31, 1996. FDA has verified the applicant's claim that NDA 20-338 was approved on May 31, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 257 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 31, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1997.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 97-2068 Filed 1-27-97; 8:45 am]
BILLING CODE 4160-01-F